

## Internal Revenue Service

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Department of the Treasury  
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Refer Reply To:  
CC:CORP:BO6  
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Date:  
January 28, 2011

### Legend

Parent =

Sub1 =

Sub2 =

DE1 =

DE2 =

DE3 =

Date1 =

Date2 =

Date3 =

Date4 =

Year1 =

Year2 =

Year3 =

Year4 =

a =

b =

c =

d =

e =

f =

g =

Day1 =

Accountant =

Dear           :

This replies to your letter, dated August 31, 2010, as submitted by your authorized representatives, on behalf of Parent and its subsidiaries, requesting a ruling that the Commissioner determine, pursuant to § 1.1502-75(b)(2) of the Income Tax Regulations, that the subsidiaries had joined in the making of Parent's consolidated return for the period Date3 through Date4. The information in that letter and supplemental letters, is summarized below.

### Summary of Facts

Parent was formed on Date1 to acquire the stock of Sub2. Parent formed Sub1 on Date2 to acquire the stock of Sub2. Prior to the acquisition by Parent and Sub1 of the Sub2 stock, Sub2 had a shares of a single class of common stock outstanding, owned by b shareholders and Sub2 was a member of a consolidated group unrelated to Parent.

On Date3, Parent acquired c shares (e%) of the stock of Sub2 and Sub1 acquired the remaining d shares (f%) of the stock of Sub2. The acquisition did not qualify as a reverse acquisition under Treas. Reg. § 1.1502-75(d)(3).

As a result of the acquisition, (i) Parent owned g% of the stock of Sub1, and together with Sub1 owned g% of the stock of Sub2, (ii) Sub2 owned g% of the equity interests in DE1 and DE2 and (iii) DE1 and DE2 together owned g% of the equity interests in DE3. DE1, DE2 and DE3 are all disregarded as entities separate from Sub2 under Treas. Reg. § 301.7701-3.

Parent retained Accountant to prepare the Federal consolidated returns for the group. Accountant prepared and Parent timely filed the initial consolidated return for the taxable year ending Date4. The initial consolidated return did not contain any Forms 1122 (Authorization and Consent of Subsidiary Corporation to be Included in a Consolidated Income Tax Return) for any subsidiaries. In addition, Sub1 was inadvertently omitted as a subsidiary on the initial consolidated return (although its income and deductions were included) and from the Form 851 (Affiliations Schedule), Sub2 was omitted from Form 851, and DE3 was mistakenly included as a subsidiary corporation on Form 851 because, at the time, it was believed that Form 8832 (Entity Classification Election) had been filed and the election made to treat DE3 as a corporation.

### Representations

Parent has made the following representations:

- (a) Each of Parent, Sub1 and Sub2 is a domestic entity that is taxable as a corporation.
- (b) Except for the failure to file Form 1122, Parent, Sub1 and Sub2 were eligible to file a consolidated Federal income tax return for the taxable year beginning Date3 and ending Date4, and taxable years ending Day1 of Year2, Year3 and Year4.
- (c) The income and deductions of Parent, Sub1 and Sub2 were included in the timely filed Parent consolidated returns for the years ending Day1 of Year1, Year2, Year3 and Year4.
- (d) A separate return was not filed by Parent, Sub1, or Sub2 for the years ending Day1 of Year1, Year2, Year3 or Year4.

### Law

Section 1501 of the Code provides that the making of a consolidated return shall be upon the condition that all corporations which at any time during the taxable year have been members of the affiliated group consent to all the consolidated return regulations prescribed under section 1502 prior to the last day prescribed by law for the filing of such return. The making of a consolidated return shall be considered as such consent.

Section 1.1502-75(a)(1) of the Income Tax Regulations provides that a group which did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year, provided that each corporation which has been a member during any part of the taxable year for which the consolidated return is to be filed consents to the regulations under § 1502.

Section 1.1502-75(b)(1) provides that the consent of a corporation shall be made by such corporation joining in the making of a consolidated return for such year. A corporation shall be deemed to have joined in the making of such return for such year if it files a Form 1122 in the manner specified in § 1.1502-75(h)(2).

Section 1.1502-75(h)(2) provides that if, under the provisions of § 1.1502-75(a)(1), a group wishes to file a consolidated return for a taxable year, then a Form 1122 must be executed by each subsidiary. The regulation provides rules for properly executing Forms 1122 and attaching them to a consolidated return and also provides that a Form 1122 is not required for a taxable year if a consolidated return was filed (or was required to be filed) by the group for its immediately preceding taxable year(s).

Section 1.1502-75(b)(2) provides that, if a member of the group fails to file Form 1122, the Commissioner may under the facts and circumstances determine that such member has joined in the making of a consolidated return by such group. The circumstances that the Commissioner will take into account in making this determination include the following: (i) Whether or not the income and deductions of the member for such taxable year were included in the consolidated return; (ii) Whether or not a separate return was filed by the member for that taxable year; and (iii) Whether or not the member was included in the Affiliations Schedule, Form 851, for such taxable year.

### Ruling

Based solely on the information submitted and the representations made by Parent, we rule that Sub1 and Sub2 have joined in the making of the Parent group's initial consolidated return for the period Date3 through Date4. Thus, in accordance with the requirements for joining in filing a consolidated return as set forth in section 1501, the members are determined to have consented to all of the consolidated return regulations prescribed under section 1502 prior to the last day prescribed by law for filing of such return.

### Caveats

We express no opinion about the tax treatment of the facts described above under other provisions of the Code or Regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, these facts that are not specifically covered by the above ruling.

Specifically, we are expressing no opinion as to the validity of any entity classification election made or not made with respect to any of the entities.

The ruling contained in this letter is based upon information and representations submitted on behalf of Parent and its Subsidiaries and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the taxpayer's ruling request. Verification of this material may be required as part of the audit process.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by

attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

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Richard M. Heinecke  
Assistant to the Branch Chief, Branch 6  
Associate Chief Counsel (Corporate)